No. 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

AMERICAN TRUCKING ASSOCIATION, INC., ET AL.,
Appellants,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellees*

On Appeal From the United States District Court for the District of Columbia

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BRIEF OF TRAFFIC BUREAUS OF OR CHAMBERS OF COMMERCE, SHIPPERS, AND EMPLOYEES OF ROCK ISLAND MOTOR TRANSIT COMPANY, INTERVENERS-APPELLEES

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CITATIONS

STATUTES

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I. FOREWORD

Appropriate and extensive Briefs are being filed by the Interstate Commerce Commission and the Rock Island Motor Transit Company, intervening

defendant, in which the questions presented and issues raised by Appellants and intervening Plaintiffs, in their Briefs, will be fully covered and answered. Thus, we will not burden the Court with a repetition of pointing out the untenable positions of appellants on the issues of (1) whether the Interstate Commerce Commission, in every instance, in authorizing the performance of motor carrier service by railroads or their affiliates, are required, by the Provisions of the Interstate Commerce Act and the National Transportation Policy, to limit the motor service to be given to that which is auxiliary to or supplemental of the rail operations of the railroads involved; and (2) whether the Interstate Commerce Commission, after authorizing the performance of restricted motor carrier service, by a railroad affiliate, over routes acquired by purchase, under Section 5 of the Interstate Commerce Act, 49 U. S. C. Section 5, has authority, under Section 207 of the Interstate Commerce Act, 49 U. S. C. Section 307, *upon proper application and after full public hearing,* to grant to such carrier the right to perform a partially restricted motor carrier service over the same routes?

Likewise, the foregoing Appellees will fully respond to Appellants' contention that the record fails to support the Interstate Commerce Commission's Report and Order authorizing the Rock Island Motor Transit Company to conduct the motor carrier operations granted it in Docket No. MC-29130 (Sub. No. 70), *The Rock Island Motor Transit Company Common Carrier Application.* (63 M.C.C. 91).

It is the intention of these intervening Appellees to supplement the briefs filed by Counsel for the Interstate Commerce Commission and Rock Island Motor

Transit Company relative to the great need of the service authorized as evidenced in the Record and to sustain the Interstate Commerce Commission's decision in this case in the public interest.

II. BASIS OF INTERVENTION

The following organizations and persons intervened in and participated throughout the entire proceedings in this cause before the Interstate Commerce Commission:

The Traffic Bureaus of and/or the Chambers of Commerce of:

Town	Approx. Population
Davenport, Iowa	80,000
Iowa City, Iowa	30,000
Cedar Rapids, Iowa	80,000
Newton, Iowa	12,000
Des Moines, Iowa	190,000
Atlantic, Iowa	7,000
Harlan, Iowa	5,000
Ottumwa, Iowa	40,000
Mason City, Iowa	30,000

Shippers' Committee

(1) Mr. Paul Monroe, President of Monroe Company, Colfa, Iowa, manufacturer of lodge and church furniture, and chairman of Shippers' Committee.

(2) Mr. A. C. Holmdahl, President of the Mid West Stamping Company, Kellogg, Iowa, manufacturer of stamping, hardware and machinery parts — now engaged in essential government work.

(3) Mr. P. H. Kuyper, President of Rol Screen Company, Pella, Iowa, manufacturer of window case-

ments and venetian blinds, engaged in government contract work.

(4) Mr. Sharp Lannon, General Manager, Grinnell Shoe Company, Grinnell, Iowa, manufacturer of shoes, with past government contract work and probable similar work in future.

(5) Mr. G. L. Engle, Traffic Manager, Wind-Power Mfg. Company, Newton, Iowa, manufacturer of farm machinery, engaged in government work.

(6) Mr. R. L. Cocklin, Vice-President, Laco-Oil Burner Company, Griswold, Iowa, manufacturer of oil burners and heaters.

(7) Mr. C. C. Vieth, general merchandise store, Oakland, Iowa,

because the firms represented by these organizations and persons had depended upon the service of the Rock Island Motor Transit Company and its predecessor, the White Line Motor Freight Company, for more than twenty (20) years, the vital importance of such service to them will be more fully developed in the brief following.

Employees' Committee

(1) John F. Morrison, *Chairman,* Company Commercial Agent, Des Moines, Iowa, nine (9) years' service with the Company; (2) Don Quinn, City Dispatcher, Des Moines, Iowa, nine (9) years' service; (3) Ross Johnson, former driver now over-the-road dispatcher, Des Moines, Iowa, ten (10) years' seniority with Company; (4) Mrs. Lillian McKenna, Assistant Payroll Clerk, Des Moines, Iowa, seven (7) years' association with Company; (5) P. J. Doyle,

former driver, dock worker and now claim adjuster, twelve (12) years' service with Company, because the more than eight hundred and fifty (850) employees of the Rock Island Motor Transit Company were dependent upon the continuation of the motor carrier operations of that company for their jobs and tenure and seniority rights which they had acquired in the employment with the Rock Island Motor Transit Company and its predecessor, The White Line Motor Freight Company, which facts will be further developed in the brief following.

III. BACKGROUND OF CASE

It is the purpose of these Interveners to point out to the Court the fact that there is a great deal more at stake in this case than any effect that its final determination will have, be it favorable or adverse, upon the applicant, the Rock Island Motor Transit Company, or the interveners and protestants in opposition to the company's application for a certificate to continue to perform motor carrier service in the territory involved.

The Record shows that a great number of witnesses, those who had actually used the Company's service for many years, testified without qualification, that a denial of a continuation of the Company's service would cause them irreparable loss in their respective businesses because no comparable transportation service was available to them.

It is difficult to properly present the interests and positions of these interveners without repeating or partially duplicating some of the factual data which may be presented in other briefs filed in this cause. However, to give the Court a full understanding of all

the facts which the Interstate Commerce Commission had before it, at the time of its decision herein, we deem it necessary to review some of the background and history of the case.

The application, although it covers the route between Chicago, Illinois, and Omaha, Nebraska, primarily provides service to a large segment of the State of Iowa. To appreciate the interest of the shipping interests represented by these intervening Appellees, the development of the motor carrier industry in the State of Iowa must be considered.

Prior to the Federal Motor Carrier Act of 1935, Part II of the Interstate Commerce Act, and from the time of the first enactment of a regulatory act in Iowa, governing Iowa intra-state transportation of freight, in 1923 the average motor carrier was engaged in transporting merchandise from jobbing and wholesale centers in the State such as Des Moines, Cedar Rapids, Sioux City, Davenport, Waterloo, etc., to the small towns in the trade areas of those shipping centers. *It was a one-way operation*—from the jobber or wholesaler to the small town merchant. The motor carrier of that day was generally an owner-operator and occasionally would have one or two additional trucks. These trucks had a very limited capacity and a truck which transported more than five tons was an exception rather than the rule.

With the advent of paved highways between the jobbing centers and across the State of Iowa in 1929 to 1931 intercity motor carrier operations developed so that by 1934 there was a complete network of motor carrier lines operating between all the principal towns and cities within the state, and serving all the

intermediate points, under authority granted them under the Iowa Motor Carrier Act, for intra-state authority, and performing interstate operations over such routes and to all intermediate points without regulation or grant of authority until the Federal Motor Carrier Act of 1935 was passed. (For this network of lines which were so established see Exhibit 25, R. 1919.)

Likewise, in the period between approximately 1930 to 1935, extensive intercity motor carrier operations were established, by new motor carriers in the field, between Chicago, Illinois, and Des Moines, Iowa; Des Moines, Iowa, and Omaha, Nebraska; Des Moines, Iowa, and the twin cities of Minneapolis and St. Paul, Minnesota; etc. These operations were confined primarily to overhead operations between the terminal points and as time went on these operations were extended to other interstate points. During all this time, however, the local service, to the smaller communities, commonly referred to in the industry as "peddler service," was being conducted by the original carriers.

The White Line Motor Freight Company, the predecessor of Rock Island Motor Transit Company, the present applicant, was one of the original motor carriers in the State of Iowa (R. 228), performing first a local peddler service from Des Moines to Iowa towns along U. S. Highway No. 6, both east and west from Des Moines. Later this Company, but long prior to Federal regulation in 1935, extended its operations to the interstate points of Omaha, Nebraska, and Chicago, Illinois, continuing to give local "peddler" service to all the small and intermediate towns between Omaha and Chicago.

With the development of motor carrier service along the main highways in Iowa, both in intra- and interstate commerce, which highways in virtually every instance paralleled a main rail line across the state, the local way freight service of the railroads gradually diminished because of the diversion of traffic to the motor carrier lines who were giving a more flexible and efficient service. The merchants and businesses in the small communities along these lines and routes thus turned to and developed their businesses and enterprises on the motor carrier service so established.

The White Line Motor Freight Company and its successor, Rock Island Motor Transit Company continued throughout the years to serve all the merchants along U. S. Highway No. 6 between Omaha and Chicago and various off-route points, all of which were rail points of the Chicago, Rock Island and Pacific Railroad, both in intra- and interstate commerce; whereas, the motor carriers or predecessors who came into the transportation field shortly prior to Federal Regulation in 1935, such as Des Moines Transportation Company; Iowa-Nebraska Transportation Company; Bruce Motor Freight Company; etc.; continued to perform only an overhead service between the main terminal points and to such intermediate points where there was volume traffic and then in only interstate commerce because the original carriers, such as White Line Motor Freight Company, had been granted exclusive intra rights along the routes served by them (R. 21).

The purpose of the foregoing recital of the development of the motor carrier industry in Iowa and particularly as it developed in the territory involved in this proceeding is to point out to the Court the basis

and reason of the dependence of these interveners and the shipping interests represented by them in the continuation of the service so long provided by the Applicant and its predecessor.

ARGUMENT

POINT I

The Federal Motor Carrier Act, Part II of the Interstate Commerce Act, 49 U. S. C. 207, Requires That the Findings and Order of the Defendant, the Interstate Commerce Commission, be Sustained.

Section 207, Title 49 U. S. C., provides:

> "(a) Subject to Section 310, a *certificate shall be issued* to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the Application, if it is found that the Applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, *is or will be required by the present or future public convenience and necessity* * * *."

The applicant in this case was found fit, willing and able properly to perform the service proposed and to conform to the requirements, rules and regulations of the Commission (R. 10). Its many years of successful operations demonstrate that it possesses these qualities. The sole issue remaining, therefore, is the service proposed required by the present or future public convenience and necessity? This query must be definitely answered in the affirmative. Past lawful operations in a territory is not only the best, but virtually conclusive evidence of the need of the service. (See

C. & D. Motor Delivery Company—Elliott, 38 M.C.C. 547; *Miller-Newman,* 57 M.C.C. 395.) The Applicant has been serving and proposes to continue to serve many points and places not otherwise served by motor carriers and in many instances without rail service. No other motor carrier or other transportation facility is presently giving or can perform the service which has been performed by the Applicant and which the Applicant proposes to continue to perform. (R. 74)

A denial of the instant application by the Commission would have been arbitrary in view of the record establishing the great need for the continuation of Applicant's service and subject to "judicial review and reversal." See: 9 American Jurisprudence, 489, Section 87; *Baltimore & Ohio Railroad Company* v. *United States,* 5 Fed. Supp. 929 and affirmed 293 U. S. 454; 55 S. Ct. 268; *Oregon R. & N. Co.* v. *Fairchild,* 224 U. S. 510, 32 S. Ct. 535, and *Thomson* v. *Iowa State Commerce Commission,* 235 Iowa 469; 15 W. W. 2d 603.

In *Baltimore & Ohio Railroad Company* v. *United States, supra,* it is said:

> "Epitomizing what has already been said—the commission was bound to give legal effect to facts established in evidence; Oregon R. & N. Co. v. Fairchild, 224 U. S. 510, 525, 32 S. Ct. 535, 56 L. Ed. 863; its order should be set aside if disregard by it is shown of substantial and uncontradicted evidence having a bearing upon the issue, S. W. Bell Tel. Co. v. Public Service Commission, 262 U. S. 276, 287, 43 S. Ct. 544, 67 L. Ed. 981, 31 A. L. R. 807; and to refuse to consider pertinent and substantial evidence is considered arbitrary action, sufficient to set aside its order, Chicago Junction Case, supra."

A decision, in this case, denying the Application, in view of the overwhelming evidence of the need of the service, would have been directly contrary to the definitely expressed intention of the Congress as set forth in the above quoted part of the Federal Motor Carrier Act.

POINT II

The Public Interest Was and is the Sole and Paramount Issue in This Case.

The intervention of the Iowa State Commerce Commission in support of the instant application; the intervention and support of the traffic bureaus and Chambers of Commerce of the principal jobbing and shipping centers in the State of Iowa; the intervention and support of the traffic bureaus of the great shipping centers of Chicago, Twin Cities, St. Joseph, Missouri, and Omaha, Nebraska, together with the intervention and support of the application by representatives of independent motor carriers serving the midwest territory, some of whom are competitive with the applicant in the territory involved, very forcibly demonstrate that there is a great public demand and need for the service proposed by the Applicant.

Certainly, if there was not such a need for applicant's service, the following typical representatives of traffic bureaus and Chambers of Commerce would not have made such pertinent statements in their testimony as:

George M. Cummins, Traffic Commissioner of Davenport, Iowa, Chamber of Commerce, testified:

> "It (Applicant) has been a satisfactory service, and we want it to continue as a daily service. Anything that will hurt, that is going to jeopardise

our interests. (R. 231). * * * I would say * * * that I know of no other one (motor carrier serving Davenport) that so completely gives that satisfactory service." (R. 232)

Arthur J. Maurer, Assistant Traffic Director of the Chicago Association of Commerce and Industry, testified:

"* * * it is the feeling of our shippers (2100) that the Rock Island Motor Transit is performing a necessary service and that they should be permitted to perform a *full common carrier operation.* That means to handle not only the smaller towns but the larger towns on their route and to handle truckloads as well as less-than-truck load traffic. In other words, to have an operation which is economically sound." (R. 245)

Robert T. Gage, Secretary-Manager of Iowa City, Iowa, Chamber of Commerce, stated:

"* * * there is no doubt but what one of the outstanding attractions that we have in Iowa City is our trucking facilities and, of course, the very nub of that is the Rock Island Motor Transit's interstate service." (R. 485)

Henry Archambo, Assistant Traffic Director for the Minneapolis, Minnesota, Traffic Association, whose members have a regular flow of traffic, by motor truck, into the Iowa territory served by Applicant company, testified:

"* * * We have got some very good truck service which we want to keep out of the Minneapolis market, principally Watson, H & W, Des Moines Transportation; but when you come to peddle service, my experience has been this in investigations which I have made * * * the Rock

Island Motor Transit Company has been complying with its common carrier authority, where the other fellows who should give us this kind of service are picking and choosing the freight, and that is very detrimental to our industry." (R. 1086)

Carl A. Hansen, Traffic Manager of Des Moines, Iowa, Chamber of Commerce, said:

"I know numerous carriers have interstate rights to serve those points, (small communities located intermediate between the larger centers) but I know of none who are serving on the smaller shipments except the Rock Island Motor Transit. (R. 1318) * * * peddler service, which is being rendered by the Rock Island Motor Transit Company, for the handling of both intra- and interstate shipments, is a matter of concern to the shippers and receivers of freight who are members of our bureau here in Des Moines." (R. 1319)

nor would it be expected that such representative independent motor carrier operators would have made the following statements in support of the continuation of Applicant's service:

V. J. Grice, General Manager of H & W Motor Express Company of Dubuque, Iowa, which company is in direct competition with the applicant company in part of the Iowa territory,

"We have a large amount of interchange with Rock Island Motor Transit, both in freight that we originate and freight that they originate. We have common points of interchange at Des Moines, Cedar Rapids and the Tri-cities, (Davenport, Iowa, Rock Island and Moline, Illinois) and in some respects we are competitive to the Rock Island Motor Transit. There are points served by Rock Island Motor Transit that our company has

authority to serve for which we interline traffic with Rock Island Motor Transit for delivery because there is insufficient volume for us to conduct the operation at a profit." (R. 295)

M. J. Riley, Vice-President and Traffic Manager of Dohrn Transfer Company of Rock Island, Illinois:

"* * * We have interlined considerable traffic with the Rock Island Motor Transit Company at the Tri-cities (see above) (R. 343). Excepting one or two smaller points * * * I know of no other carrier that performs a local peddler who will render a consistent service to the points in Iowa served by the Rock Island Motor Transit Company than that company." (R. 345)

Other motor carriers who have interlined with the Applicant company for years gave similar evidence of their dependence on Rock Island Motor Transit for local service to all the points and places served by it.

The Record in this case demonstrates beyond question that the quality and character of the service rendered by the Applicant Company throughout the years up to the time that it was ordered to curtail its operations was of such a nature that business and industry, both within and without the State of Iowa, became dependent upon it to the extent that a cessation of such operations would result in a direct impairment of the conduct of business and service rendered by such businesses and industry.

The testimony of *Honorable Carl Reed, Chairman of the Iowa State Commerce Commission,* and a man who has had many years experience with and knows the transportation problems of the State of Iowa, clearly establishes that the service proposed by the

applicant was in the public interest and welfare. The following testimony of Chairman Reed demonstrates this public interest:

> "The experience of our commission, based upon the information that came to us from the shippers and also the carriers themselves, has been *that the carriers were not interested in local service.* (R. 741). The trend in this state in the matters that we have contact with has been that the carriers generally are getting away from the local service and the smaller shipments. (R. 742). The position of the commission has been that it does not take any position for or against any particular carrier. In this particular instance, our interest has been to see that service was performed to the various communities. * * * I don't know offhand just what authority every carrier has, *but I do not recall of any carrier that has been performing this service that the Rock Island Motor Transit Company has been performing.*" (R. 743)

Who is better qualified to know and who is more familiar with the transportation needs and requirements of the people of Iowa than the legally constituted body established by the State of Iowa, the Iowa State Commerce Commission, speaking through its Chairman? The Iowa State Commerce Commission as shown by Chairman Reed's testimony is not interested in or concerned with what particular carrier performs a service as long as the service is performed. That body has the statutory duty to see that public transportation agencies provide an efficient and regular intra-state service to the extent of their capabilities, be that service rail or motor.

POINT III

Any Restriction Imposed Upon the Applicant Company Requiring it to Operate Strictly on an Auxiliary and Supplemental Basis to the Rail Operations of the Chicago, Rock Island and Pacific Railroad to the Extent That Traffic Handled by It Had to be on Rail Billing and Have Either a Prior or Subsequent Movement by Rail Would be Contrary to the Record and Detrimental to the Public Interest.

It is apparently appellants' position that any authority granted to Applicant must, under Section 5 (2) (b) of the Interstate Commerce Act as they attempt to read it into Section 207 of the Motor Carrier Act, be strictly confined to the handling of rail freight by the transit company, i.e., on rail billing and which had either a prior or subsequent rail movement. Of course we cannot agree with appellants' interpretation of Section 5 applying to cases arising under Section 207 of the Motor Carrier Act (convenience and necessity or certificate cases). As stated, this contention will be thoroughly answered by Briefs filed by Defendant-Appellees.

We do, however, point out that if such restrictions were imposed that Applicant's operations would be so curtailed that its service would not and could not fulfill the public requirements. Before further discussing the drastic effect that such restrictions would have upon the service involved, it is well to keep in mind that the operations authorized by the Commission in this case were restricted to require: (1) that applicant serve only points on the rail lines of the Rock Island Railroad as specifically designated in the Report of the Commission; (2) that there may be attached from time to time to the privileges such reasonable terms, conditions, and limitations as the public convenience and necessity may require, and

(3) all contractual arrangements between the applicant company and the Chicago, Rock Island & Pacific Railroad Company shall be reported to the Commission and shall be subject to revision. (R. 116-117)

The finding by the Commission that a restriction requiring that applicant handle only rail-billed would be unworkable is fully supported in the record as established by the Commission's finding:

> "Theoretically this should be true, but in actual practice the motor-billed freight is handled with greater dispatch; and this is the reason that many of the public witnesses supporting applicant have refused to deliver their shipments to Rock Island for billing even though the line-haul transportation thereof is performed entirely by Motor Transit. The reluctance of shippers to use this kind of service is clearly due to the fact that it requires longer time in transit. For example, a shipment moving on rail billing from the Twin Cities to Marengo is picked up by the cartage company employed for that purpose by Rock Island and delivered to the Minneapolis or St. Paul rail terminal, worked, billed, and, in 1 or 2 days, turned over to Motor Transit for movement to destination. This shipment would require from 2 to 4 days more in transit than would be necessary if it moved by Motor Transit on motor billing. The situation in the reverse direction would be substantially similar. Motor-billed shipments from Chicago are picked up by Motor Transit and moved out in road-haul equipment the same night, as contrasted with rail-billed shipments which are picked up by a cartage company for Rock Island and moved to Burr Oak, 15 miles, worked, billed, and returned to Chicago for transfer to Motor Transit for transportation to destination, or if it is necessary to move these shipments west from Burr Oak in boxcars owing

to the key-point restriction they would not reach Davenport for 2 or 3 days and sometimes longer. Similar delays occur on shipments in boxcars to Des Moines. The delays in handling rail-billed shipments from Chicago are greater than from the Twin Cities. Rail-billed freight is delayed at points in Iowa on account of the (fol. 78-B) method of handling these shipments before they are transferred to Motor Transits for movement." (R. 113-114)

Likewise, such restrictions would prohibit the necessary interlining of traffic between other motor carriers and applicant, as found by the Examiner, and set forth in his report:

"Opposing motor carriers with appropriate authority have not provided such a service, except with respect to selected small segments of the routes, principally immediately east (fol. 48) of Des Moines. These ca[illegible]rior to August 30, 1951, delivered less-than-truckload freight to Motor Transit for movement to destinations they are authorized to serve. Some of this freight consisted of low-rated articles which such carriers deemed unprofitable to handle. These carriers in many instances refused to accept less-than-truckload shipments from their motor carrier connections for movement to a destination embraced in their operating authority. *As a result thereof, several of these connecting carriers have had to rely upon Motor Transit to accept and make delivery of such shipments,* even in cases where the delivering carrier was designated by the shipper. These experiences have convinced some of the connecting carriers that the unrestricted services of Motor Transit should continue to be available to them so that they may have a carrier that is always willing and able to accept interchange shipments destined to points on the White

> Lines and Frederickson Line Routes. One motor carrier that possesses rights on U. S. Highway 6 between Davenport and Des Moines, elects to give all its less-than-truckload freight to Motor Transit for delivery at such points, because it is not profitable for it to provide this service." (R. 74)

Thus, could anything be more convincing than that the "public convenience and necessity" required, as found by the Commission, that applicant be granted the modified restrictions in its authority which it was granted. To have imposed the restrictions as urged by the opposing carriers would have virtually dried up a substantial part of the flow of traffic into the communities served by applicant company because a large percentage of the traffic handled by it originated on and was interlined from other motor carriers. (See Exhibit 16, R. 1869).

POINT IV

The Setting Aside of the Commission's Order Granting the Application Involved Would Result in Great Hardship and Loss to the Present Employees of the Applicant Company and Contrary to the Public Interest.

It is most difficult to discuss hardly any phase of this case without reverting to the operations of the White Line Motor Freight Company, Applicant's predecessor. Applicant, in taking over White Line's operations in 1938, likewise took over all its personnel. Applicant continued a motor truck service, which as previously pointed out, was the original one in the territory involved in these proceedings. The public, as demonstrated by the Record, became dependent upon that service.

Likewise, the employees of the Rock Island Motor Transit, many of whom came over from the White

Line at the time of the acquisition, have acquired and established in the company very substantial positions and valuable seniority rights.

If the Decision and Order of the Commission should be reversed and Applicant denied the right to continue the operations so long conducted by it and its predecessor, White Line, the rights of a very substantial part of the Applicant's employees would not only be jeopardized, but their positions terminated. The record clearly establishes this fact in the testimony of W. F. Peterson, general manager of the Applicant Company, when he testified:

> Q. "Now, Mr. Peterson, there has been testimony in the record that at certain shipping points such as Iowa City, Grinnell, Newton and Atlantic, leaving out the larger points such as Des Moines and Davenport, that it was essential to the shipping interests there, because of the smaller nature of the businesses located in those points, that facilities be available for rate information, routing shipments, for loss and damage claims and tracing shipments. Now, in the event that your company was not authorized to restore and regain the opportunity to conduct the services they were giving prior to any restrictions, would those facilities, including the personnel available in those cities and towns, remain?
>
> A. It was my thought at the time that these restrictions were imposed, and at the time of the temporary hearing, that we might be able to maintain certain facilities at some of these points. I am convinced today that the bulk of these smaller points, so far as the motor subsidiary is concerned, will be closed up.
>
> (fol. 1888) Q. By that do I understand that in those points I have named, including, well, Muscatine and Washington, where there was

testimony that the terminal facilities that your company has included rate information, routing information, for tracing shipments, and loss and damage claims, that they were a valuable service, and the only service of that kind available in those communities by any common motor carriers, that your company would terminate those facilities and that service to those communities?

A. It is my best judgment that would happen.

Q. And, as I understand, you would no longer maintain the facilities and keep the personnel there?

A. That is correct.

Q. And your personnel would then be reduced to that extent in those particular communities?

A. Yes, that is right.

Q. Now, I understand that here in Des Moines, the home office of the Rock Island Motor Transit Company, that you have a complete office force independent of the railroad, which is available and which does aid in serving the community served by the Rock Island Motor Transit Company. Now, in the event that your company did not have its original operating rights restored, what would be the effect upon the facilities and personnel which you have here in Des Moines, which has been used by the Rock Island Motor Transit Company in serving the public in the territory involved in this case?

(fol. 1889) A. Well, of course, Des Moines would be the hardest hit of any of them. It is our general office here, and if we are forced to go into an operation such as we would have to go in under the White Line order, all I would maintain here would be cost accounting and payroll. That means that beyond that it would probably be reduced to, probably just wiped out except cost accounting and payroll.

Q. How many employees did your company have at the time of the effective date of the order

in the White Line case last July 31, which were being used to serve the public in the territory covered by your company?

A. Well, it run on the regular payroll about seven hundred fifty, and your extras aren't on there. Our peak was eight hundred eighty-three last year.

Q. How many employees does your company now have?

A. It would run between seven and eight hundred.

Q. How many employees would your company have if you were required to go to a strictly rail billing service in connection with the White Line Motor Truck Line?

A. Well, it would be far less than I anticipated at the time this order was made effective. At that time I figured two hundred twenty-two would be laid off, but they would be far more than that because I can see the results of what happened under this restrictive order, and if that is carried out, why if will be reduced far below the two hundred (fol. 1890) twenty-two that I have figured would be laid off.

Q. Well, now, do I understand that, for instance, in Newton you have a terminal agent there, you have pick-up and delivery drivers, and in these other places where you have terminals, that you have the terminal agent, pick-up and delivery drivers, and personnel of that kind, would your company if required to go to a strictly rail billing, would the personnel in those communities be eliminated or materially reduced in number?

A. They would be materially reduced, and they might be entirely eliminated because if there wouldn't be sufficient traffic to warrant the pick-up and delivery, we would put the pick-up and delivery up for bid, and some local contractor could do it cheaper than we could do it under the restricted operation.

Q. Now, you testified it required the intrastate, interstate and rail billed freight to even substantially sustain your peddler local operations, isn't that correct?

A. You have to have all of it to even begin to sustain a peddler operation."

(R. 1410-1411 & 1412)

Under the provisions of Section 5 (2e) of Part I of the Interstate Commerce Act it was the duty of the Commission, at the time of considering the acquiring of the White Line Motor Freight Company's operating rights by the Applicant Company, to have fully considered the effect of such acquisition upon the employees of the then existing carrier. If the Commission found that by reason of the transfer of such rights to the Applicant Company, that it would be necessary to restrict the Applicant Company's operations in such a way that a substantial number of the existing carrier's employees would be adversely affected, then it would have been the duty of the Commission to deny the transfer of such rights unless it was in the general public interest to otherwise approve such transfer.

It is the position of these interveners, employees, that at the time of the transfer of the White Line Motor Freight Company's rights to the Applicant Company that their rights as such employees of the original company were not considered, if there were later to be limitations and restrictions placed upon the operations of the Rock Island Motor Transit Company, which would eliminate and do away with their jobs.

We are not attempting to reargue the acquisition case of the White Line Motor Freight Company by the

Applicant Company, but we are merely attempting to point out the drastic impact and effect that a reversal of the Order granting the instant application would have not only upon the public but upon the several hundred employees of the Rock Island Motor Transit Company. We believe that the jobs and rights of several hundred employees of the Rock Island Motor Transit Company coupled with the great public demand for the continuation of the services rendered by the Rock Island Motor Transit Company, as successor to the White Line Motor Freight Company, manifest such a public interest that the public convenience and necessity required the granting of this Application in the form in which it was granted.

These intervening employees-Appellees are at a loss to understand the rather hostile and most adverse position taken, by Railway Labor Executives' Association, to their interest and welfare, most of all of whom are members of the Labor Union represented by such Association, by said Association intervening in support of the Appellants in this case. These employees have been paying dues over the years to the Union for help and protection when they needed it, yet in this time of crisis, when their jobs are at stake, they find their Union officials working against them.

POINT V

Congress Never Intended That Part II of the Interstate Commerce Act, the Regulation of Motor Carriers, should be Applied to the Public Detriment and the Denial of Motor Carrier Service Where Required in the Public Interest Simply Because the Carrier Giving That Service Happened to be Affiliated With a Railroad.

The most amazing, if not shocking, part of Appellant's Brief is found on page 75. Therein Appellants make this most alarming statement:

"The time has come, we believe for this Court to forcefully remind the Commission of this mandate and to take steps to insure that it is faithfully obeyed, in this case and others of similar nature which may follow. The most appropriate method by which this Court can achieve this objective is to require the Commission in this case, and others which involve rail use of motor vehicles, to impose, as a minimum, a restriction limiting such use to the transportation of shipments having a prior or subsequent rail haul."

Certainly nowhere in the Commerce Act is there any language manifesting any intent on the part of the Congress to prohibit railroad owned or affiliated motor carriers to confine their operations solely to such service as proposed by Appellants. Such determination by the Court would be tantamount to judicial legislating into the Commerce Act, something that Congress never intended. The statement of Senator Wheeler in the debate, on the proposed Motor Carrier Act, made it clear that it was the policy of Congress that interstate motor transportation *should be regulated in the interest of the public* and not in the interest of the railroads or any other form of transportation. See Cong. Rec. 5657, April, 1935.

To impose the restrictions as suggested by Appellants would certainly not be in the public interest because, as the record shows, public transportation service to many communities, presently served by the Applicant Company, would be denied—there being no other carriers serving them.

The Record shows and Briefs filed by other Appellees will clearly demonstrate, that instead of

Applicant having secured a monopoly in the field served by it, during the years in which it operated without restrictions, that it has not even retained the position, in respect to volume of traffic, that its predecessor, The White Motor Freight Company, had developed.

The restrictions proposed by Appellants, as set forth above, would destroy the transportation service upon which the firms, represented by these intervening Traffic Associations and Chambers of Commerce, and these shipper-interveners, have depended upon for so many years. Such destruction of transportation service to this large section of the state of Iowa, and in reality, in the midwest by reason of the traffic moving from Chicago, Minneapolis, St. Paul, Omaha and Kansas City, both direct and on interchange, into the Iowa territory, would be most contrary to the public interest. Congress intended to stabilize interstate motor carrier transportation and not destroy it by the enactment of the Federal Motor Carrier Act of 1935. Appellants are asking for something which Congress never intended and could not intend under circumstances as shown in the record in this case.

CONCLUSION

The authority granted Applicant, with the restrictions that were imposed, by the Interstate Commerce Commission, 63 M.C.C. 91, was not only supported by the Record, but required in the public interest and under the provisions of Sec. 207 of Part II of the Interstate Commerce Act. The decision of the Court below, 144 F. Supp. 365, sustaining the Commission's grant of authority to Applicant was proper and con-

sistent with the Record and applicable laws—and should be *affirmed.*

Respectfully submitted,

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